**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN**

**TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929**

**OP.No. 10204 of 2002(M)**
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**PETITIONER:**
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**RAJEEV, S/O. K.NANU,THONDAMKANDATHIL, NENMENIVADAKKY WARD, MUNROTHURUTHU P.O., KOLLAM DISTRICT.**

**BY ADV. SRI.ANCHAL C.VIJAYAN**

**RESPONDENTS:**
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1. **THE DIRECTOR, DEPARTMENT OF TOURISM, THIRUVANANTHAPURAM.**

2. **THE DISTRICT TOURISM PROMOTION COUNCIL, KOLLAM REPRESENTED BY ITS SECRETARY,SUB COLLECTOR, KOLLAM.**

3. **THE CHAIRMAN, DISTRICT TOURISM PROMOTION COUNCIL, KOLLAM(THE DISTRICT COLLECTOR, KOLLAM).**

**BY ADV. SRI.BECHU KURIAN THOMAS - r2 & r3**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 31/07/2007, ALONG WITH OP NO. 10430 OF 2002 OP NO. 10309 OF 2002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**tss**

**OP. 10204/2002**

**ORDER ON CMP .NO. 18204/02,18309/02 , 18430/02 IN OP.10430/2002**

**DISMISSED**

**31.07.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1:- COPY OF THE GO(P) NO.254/88/GAD DT. 28.7.98 ISSUED BY THE SECRETARY TO GOVERNMENT DEPARTMENT OF GENERAL ADMINISTRATION POLITICAL B) DEPARTMENT.**

**EXT.P2:- COPY OF THE STATEMENT SHOWING THE REMITTENCE MADE IN THE NAME OF THE PETITIONER.**

**EXT.P3:- COPY OF THE MEMO DT. 8.10.01 ISSUED TO THE PETITIONER BY THE 2N D RESPONDENT.**

**EXT.P4:- COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER DT. 11.10.01 TO THE 2ND RESPONDENT.**

**EXT.P5:- COPY OF THE ORDER DT. 17.10.01 ISSUED BY THE 2ND RESPONDENT.**

**EXT.P6:- COPY OF THE ORDER NO.DTPC/K/EST/5011/2001 DT. 19.12.01 ISSUED BY THE 2ND RESPONDENT.**

**EXT.P7:- COPY OF THE MEMO OF CHARGES DT. 19.12.01 ISSUED BY THE 2ND RESPONDENT.**

**EXT.P8:- COPY OF THE STATEMENT SUBMITTED BY THE PETITIONER BEFORE THE ENQUIRY OFFICER DT. 31.12.01.**

**EXT.P9:- COPY OF THE ENQUIRY REPORT DT. 28.1.02 SUBMITTED BY THE ENQUIRY OFFICER.**

**tss**

**OP. NO.10204/2002**

**EXT.P10:- COPY OF THE SHOW CAUSE NOTICE DT. 1.2.01 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER ON 15.2.02.**

**EXT.P11:- COPY OF THE REPLY DT. 21.2.02 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

**EXT.P12:- COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT NO.DTPC/K/EST/1004/2001 DT. 1.3.02.**

**EXT.P13:- COPY OF THE RECRUITMENT OF PERSONAL AND MAINTENANCE OF DISCIPLINES RULES OF DTPC KOLLAM ISSUED BY THE 2ND RESPONDENT DT. 11.1.02.**

**/TRUE COPY/**

**P.S. TO JUDGE**

**tss**

**THOTTATHIL B. RADHAKRISHNAN, J.**

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**O.P.Nos.10204/2002-M,**

**10309/2002-B**

**& 10430/2002-N**

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Dated this the 31st day of July, 2007.

**JUDGMENT**

These writ petitions relate to different persons who were in the service of the Kollam District Tourism Promotion Council which is controlled by an Executive Committee chaired by the District Collector. The Sub Collector is the Secretary of the Council. Having regard to the aforesaid structure, notwithstanding the question as to whether what could be the quality of the service under the Council and what could be the parameters of jurisdiction in interfering with any of its decision, what falls for immediate consideration is as regards the procedure adopted in these

matters on the basis of the Recruitment of Personnel and Maintenance of Discipline Rules of DTP, Kollam, hereinafter referred to as the "Rules".

2. The petitioners in all these matters have been visited with the penalty of removal from service. Rule 12 among the Rules, provides, inter alia, in clause c. thereof, that removal or dismissal shall be inflicted on the recommendation by the Chairman to the Executive Committee upon ratification of the decision of the Chairman by the Executive Committee. Rule 13, which provides for appeals, provides an appeal to the Chairman from the decisions of the Secretary and regarding major penalty of dismissal, the Chairman's action has to be ratified by the Executive Committee. A conjoint reading of the aforesaid Rules would show that while it is well within the power of the Chairman to reach at a decision on the basis of the disciplinary proceedings as to whether the penalty of

dismissal has to be imposed, the finality of that imposition is made dependent on the ratification of the Executive Committee. In a way, the learned counsel for the DTPC is right in stating that such ratification can follow the actual dismissal order because, ratification is always a concept to follow something that has already been done. But, the manner in which Rule 12.c. is worded creates considerable confusions as to whether the ratification should be of a tentative decision or of the final imposition. In applying the aforesaid Rules, in so far as these cases are concerned, there appears to be what is called "ratification", before the show cause notice, immediately preceding the real imposition of penalty was imposed. Is it to be taken that the Executive Committee had already ratified the proposal to inflict imposition of dismissal or removal from service? If that were so, what is the use of a show cause notice being issued by the District Collector as the Chairman. Any reply to such a show cause notice cannot be decided by the

Chairman, in any manner, contradicting the ratification already granted by the Executive Committee. This cannot be the normal flow of any just and reasonable procedure in the realm of discipline in service law. Even assuming that Rule 12.c. read with Rule 13 does not explicitly provide a pre-decisional hearing of the delinquent by the Executive Committee, it needs to be emphasized in the backdrop of the Constitution that a rule of fair hearing, including principles of natural justice, requires that the ratification procedure shall be with notice and an opportunity of hearing being extended to the delinquent particularly because, what is being ratified is his dismissal from service which, indisputably, visits a person with grave adverse civil consequences. Under such circumstances, it is necessary to read a rule of hearing into the Rules taking Rules 12 and 13 together and thereby to provide the delinquent an opportunity of hearing by the Executive Committee.

3. Having regard to what is aforesaid, without expressing anything on the merits of these matters, the petitioners are relegated for a hearing at the hands of the Executive Committee. This may be done on the basis of representations which they may present within a period of 45 days from now. They will also be given an opportunity of personal hearing either through themselves or through an authorized representative and the Executive Committee shall consider the question of ratification of the proposal of the Chairman de novo.

These writ petitions are disposed of with the aforesaid directions.

**THOTTATHIL B. RADHAKRISHNAN,**
**JUDGE.**

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**THOTTATHIL B. RADHAKRISHNAN, J.**

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**O.P.Nos.10204/2002-M,**

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**JUDGMENT**

**Dated: 31st July, 2007.**